

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

ADRIAN GARCIA, #686206

§

VS.

§

CIVIL ACTION NO. 5:05cv27

J. WILSON, ET AL.

§

ORDER OF DISMISSAL

Plaintiff Adrian Garcia, an inmate confined in the Texas prison system, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge Caroline M. Craven, who issued a Report and Recommendation concluding that the complaint should be dismissed. The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of the Plaintiff are without merit.

The Court notes that the Plaintiff is complaining about being attacked by another inmate who had been released from his cell by mistake. Officers attempted to stop the other inmate from attacking the Plaintiff, but he was still able to attack him. In order to proceed with his claim in federal court, the Plaintiff must allege facts that support a claim of deliberate indifference. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The facts as alleged in the present case at best amount to a state court claim of negligence, as opposed to a potentially meritorious federal civil rights claim of deliberate indifference to the Plaintiff's safety. He may not proceed in federal court on a negligence

claim. *Id.* Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that the complaint is **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915A(b)(1). It is finally

ORDERED that all motions not previously ruled on are **DENIED**.

SIGNED this 28th day of April, 2005.

A handwritten signature in black ink, appearing to read "David Folsom", is written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE